

KEVIN DITTRICH  
MCFARLIN vs WORD ENTERPRISES

December 05, 2017

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1	IN THE UNITED STATES DISTRICT COURT	1	I N D E X
2	FOR THE EASTERN DISTRICT OF MICHIGAN	2	WITNESS:
3	SOUTHERN DIVISION	3	K E V I N D I T T R I C H
4		4	
5	CHAD MCFARLIN, individually	5	Examination by Mr. Blanchard
6	and on behalf of all	6	
7	similarly situated persons,	7	
8	Plaintiffs,	8	*** * * * * *
9		9	
10	vs. Civil Action No:	10	E X H I B I T S
	2:16-cv-12536	11	EXHIBITS:
11		12	
12	HON. GERSHWIN A. DRAIN	13	Deposition Exhibit No. 16
13	THE WORD ENTERPRISES, LLC,	14	Deposition Exhibit No. 17
14	et al,	15	Deposition Exhibit No. 18
15	Defendants.	16	Deposition Exhibit No. 19
16	_____ /	17	Deposition Exhibit No. 20
17		18	Deposition Exhibit No. 21
18		19	Deposition Exhibit No. 22
19	The Deposition of KEVIN DITTRICH was taken	20	Deposition Exhibit No. 23
20	before me, Barbara Phillips, (CER #5598) and Notary	21	Deposition Exhibit No. 24
21	Public, in and for the County of Washtenaw, State of	22	
22	Michigan, at 221 N. Main Street, Suite 300, Ann	23	
23	Arbor, Michigan, on Tuesday, December 5, 2017, at	24	*** * * * * *
24	1:00 p.m.	25	
25			
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1	APPEARANCES:	1	(Deposition Exhibit No. 16
2		2	was marked for identification.)
3	DAVID M. BLANCHARD (P67190)	3	
4	221 N. Main Street, Suite 300	4	Ann Arbor, Michigan
5	Ann Arbor, Michigan 48104	5	Tuesday, December 5, 2017
6	734-929-4313	6	12:55 p.m.
7		7	
8	Appearing on behalf of the Plaintiffs.	8	*** * * * * *
9		9	
10		10	K E V I N D I T T R I C H
11	JEFFREY S. THEUER (P44161)	11	after having been first duly sworn to tell the
12	124 West Allegan Street, Suite 700	12	truth, the whole truth, and nothing but the
13	Lansing, Michigan 48933	13	truth, was examined and testified upon his
14	517-482-2400	14	oath as follows:
15		15	MR. BLANCHARD: Hello, Mr. Dittrich.
16	Appearing on behalf of the Defendants.	16	THE WITNESS: Hello.
17		17	MR. BLANCHARD: Am I pronouncing your
18	*** * * * * *	18	name correctly?
19		19	THE WITNESS: Yes.
20	REPORTED BY: Barbara Phillips,	20	MR. BLANCHARD: Great. It's the first
21	(CER #5598)	21	time we've met here today, isn't it?
22	and Notary Public.	22	THE WITNESS: Yes.
23		23	MR. BLANCHARD: But this is actually the
24		24	adjournment of the previously scheduled
25	ALSO PRESENT: Michele Follman	25	deposition that we're continuing. You

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<p>1 specifically.</p> <p>2 Q. So when you're taking that subminimum wage from</p> <p>3 approximately November of 2014 through the present</p> <p>4 date for the defendant companies, as part of that</p> <p>5 the defendant companies posted this exhibit we</p> <p>6 looked at before; is that right?</p> <p>7 MR. BLANCHARD: I'll show it to you again, what</p> <p>8 we're marking as Exhibit 18.</p> <p>9 MR. THEUER: This is 18?</p> <p>10 MR. BLANCHARD: 18.</p> <p>11 MR. THEUER: What was the affidavit?</p> <p>12 MR. BLANCHARD: 17. And the dep notice was 16.</p> <p>13 MR. THEUER: Thank you.</p> <p>14 MR. BLANCHARD: I should have gone through</p> <p>15 that.</p> <p>16 (Deposition Exhibit No. 18</p> <p>17 was marked for identification.)</p> <p>18 BY MR. BLANCHARD:</p> <p>19 Q. Are you ready?</p> <p>20 A. Yeah.</p> <p>21 Q. So we looked at it before. Again, I'm not trying to</p> <p>22 repeat myself, but I just wanted to verify. I don't</p> <p>23 know if you know off the top of your head when this</p> <p>24 particular notice was used?</p> <p>25 A. I do not.</p>	<p>Page 9</p> <p>1 the employee anything more than getting them up to</p> <p>2 the base minimum wage; is that right?</p> <p>3 A. To my understanding, yeah.</p> <p>4 MR. THEUER: I'll object to the form of the</p> <p>5 question just because the base minimum wage is not</p> <p>6 the same as what you were using in the prior</p> <p>7 question. Is there a difference between the base</p> <p>8 minimum and minimum wage under the statute?</p> <p>9 MR. BLANCHARD: No. I was possibly being</p> <p>10 inarticulate.</p> <p>11 BY MR. BLANCHARD:</p> <p>12 Q. So let me just replace that with 8.15. At the time</p> <p>13 the minimum wage was 8.15 the company was not</p> <p>14 pledging to pay anything more or promising to pay</p> <p>15 anything more than the amount of money it would take</p> <p>16 to get the driver to 8.15?</p> <p>17 A. To my understanding.</p> <p>18 Q. That's a yes?</p> <p>19 A. Yes.</p> <p>20 Q. And then is it true at times after that when the</p> <p>21 minimum wage changed to -- was it 8.45 at the time</p> <p>22 or something like that? It changed to different</p> <p>23 amounts. The new obligation of the company was to</p> <p>24 make sure that the subminimum wage plus any tips</p> <p>25 that were received by the driver at least exceeded</p>
<p>Page 10</p> <p>1 Q. It would be, of course, when the minimum wage went</p> <p>2 to 8.15, right?</p> <p>3 A. Correct.</p> <p>4 Q. And then the minimum wage was changed -- was it once</p> <p>5 or twice since then?</p> <p>6 A. Two, maybe three times since then.</p> <p>7 Q. And it's going up in January, right?</p> <p>8 A. Right.</p> <p>9 Q. Each time that it's changed do you know if a new one</p> <p>10 of these notice postings has been created or</p> <p>11 generated?</p> <p>12 A. I do not know that.</p> <p>13 Q. Because I've only seen this one with 8.15. I</p> <p>14 haven't seen other numbers, so I was just curious if</p> <p>15 there were other ones. I will again follow-up with</p> <p>16 Ms. Follman on that. So this notice is notifying</p> <p>17 employees that you're taking the tip credit and as</p> <p>18 part of that tip credit if their compensation falls</p> <p>19 below -- and this is at the time when it was 8.15,</p> <p>20 If their compensation falls below the 8.15 minimum</p> <p>21 wage that the company would be responsible for</p> <p>22 making up the difference so they'd get to the</p> <p>23 minimum wage; is that right?</p> <p>24 A. Correct.</p> <p>25 Q. The company wasn't responsible or pledging to pay</p>	<p>Page 11</p> <p>1 that minimum wage amount?</p> <p>2 A. Correct.</p> <p>3 Q. And at the time it was various amounts or whatever</p> <p>4 it was at the time?</p> <p>5 MR. THEUER: I'll object to the form of the</p> <p>6 question just because you were referring to the term</p> <p>7 subminimum wage. If what you mean is the cash wage,</p> <p>8 the cash wage that is allowed under the Federal</p> <p>9 Labor Standards Act for tipped employees then maybe</p> <p>10 we should clarify that. Is that what you mean by</p> <p>11 the subminimum wage?</p> <p>12 MR. BLANCHARD: Yes, that is correct.</p> <p>13 BY MR. BLANCHARD:</p> <p>14 Q. So were you a part of the decision that was made to</p> <p>15 go from a full minimum wage to the tip credit</p> <p>16 minimum wage in November of 2014?</p> <p>17 A. Yes.</p> <p>18 Q. Who else was involved in that decision for your</p> <p>19 defendant stores to do that?</p> <p>20 A. It would have been myself, Michele, and then another</p> <p>21 gentleman, Brad Follman.</p> <p>22 Q. And what did you review or consult to decide to do</p> <p>23 that?</p> <p>24 A. The industry average. We do what we call a</p> <p>25 competitive analysis so we called on Domino's Pizza,</p>

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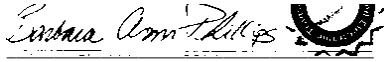
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1 STATE OF MICHIGAN )  
2 ) ss.  
3 COUNTY OF OAKLAND )  
4 CERTIFICATE OF NOTARY PUBLIC  
5 AND COURT REPORTER

6 I, BARBARA PHILLIPS, Notary Public in  
7 and for the County of Oakland, State of  
8 Michigan, do hereby certify that the witness  
9 whose attached deposition was taken before me  
10 was first duly sworn to testify to the truth,  
11 the whole truth and nothing but the truth;  
12 that thereupon the foregoing questions were  
13 asked and the foregoing answers were made by  
14 the witness, which were duly recorded by me  
15 electronically; and were reduced to  
16 typewritten form by computer-aided  
17 transcription under my direction; and that  
18 this is, to the best of my knowledge and  
19 belief, a true and correct transcript of my  
electronic records so taken.

20 I further certify that I am neither of  
21 counsel to either party, nor interested in the  
22 events of this cause.

23 

24 Barbara Phillips, #5598  
Notary Public, Oakland County, MI  
25 My Commission Expires: 11-27-2018